

ASSEMBLY BILL

No. 623

Introduced by Assembly Member Lieber

February 19, 2003

An act to amend Section 1191.10 of, and to add Section 374.9 to, the Penal Code, relating to hazardous chemicals.

LEGISLATIVE COUNSEL'S DIGEST

AB 623, as introduced, Lieber. Hazardous chemicals: discharge: warnings.

Under existing law, any person who knowingly causes any hazardous substance, as defined, to be deposited on roads, into waters, and in other specified places, is guilty of a crime, with certain exceptions. Existing law, in addition, prohibits a person from disposing of hazardous waste, as defined, at a facility that does not have the proper permit, and from knowingly, or with reckless disregard, disposing of any hazardous waste in a manner that causes an unreasonable risk of specified consequences.

This bill would prohibit a person from discharging or releasing, in the course of doing business, a chemical known to the state to cause cancer or reproductive toxicity into water or onto land where the chemical passes or is likely to pass into any source of drinking water, except as specified. The bill would, in addition, prohibit a person from exposing any individual, in the course of doing business, to a chemical known to the state to cause cancer or reproductive toxicity without first providing clear and reasonable warning to the individual, except as specified.

The bill would provide for different punishments for an act in violation of these provisions based on whether the act was done

negligently or knowingly, and whether the defendant has a prior conviction under these provisions.

The bill would require a judge, upon sentencing the defendant, to consider whether the defendant has made an appropriate public apology.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 374.9 is added to the Penal Code, to
2 read:

3 374.9. (a) A person shall not, in the course of doing business,
4 discharge or release a chemical known to the state to cause cancer
5 or reproductive toxicity into water or onto land where the chemical
6 passes or is likely to pass into any source of drinking water, except
7 as provided in Section 25249.9 of the Health and Safety Code.

8 (b) A person shall not, in the course of doing business, expose
9 any individual to a chemical known to the state to cause cancer or
10 reproductive toxicity without first providing clear and reasonable
11 warning to the individual, except as provided in Section 25249.10
12 of the Health and Safety Code.

13 (c) A person who negligently commits an act in violation of
14 subdivision (a) or (b) is punishable by a fine of not less than two
15 thousand five hundred dollars (\$2,500) nor more than ten thousand
16 dollars (\$10,000) for each day in which the violation occurs, or by
17 imprisonment in a county jail for not more than six months, or by
18 both that fine and imprisonment. If a person convicted under this
19 subdivision has a prior conviction for a violation of any provision
20 of this section, the current violation shall be punishable by a fine
21 of not more than twenty-five thousand dollars (\$25,000) for each
22 day in which the violation occurs, or by imprisonment in a county
23 jail for not more than one year, or by both that fine and
24 imprisonment.



(d) A person who knowingly commits an act in violation of subdivision (a) or (b) is punishable by a fine of not less than five thousand dollars (\$5,000), nor more than twenty-five thousand dollars (\$25,000) for each day in which the violation occurs, by imprisonment in the state prison for not more than two years, or by both that fine and imprisonment. If a person convicted under this subdivision has a prior conviction for a violation of any provision of this section, the current violation shall be punishable by a fine of not more than fifty thousand dollars (\$50,000) for each day in which the violation occurs, or by imprisonment in the state prison for not more than three years, or by both that fine and imprisonment. A corporation or other organization that violates this subdivision and that has a prior conviction for a violation of any provision of this section is punishable by a fine of not more than one million dollars (\$1,000,000), and the Secretary of State shall revoke its authority to act as a corporate entity in the state.

(e) Upon sentencing a person or entity convicted of a violation of this section, the judge shall consider whether the defendant has expressed remorse for the acts underlying the conviction. In assessing the defendant's level of remorse, the judge shall consider whether the defendant has made an appropriate public apology that reflects the nature of the violation and the number of potential victims. However, a public apology shall not exempt the defendant from the punishment specified in subdivision (d).

SEC. 2. Section 1191.10 of the Penal Code is amended to read:

1191.10. The definition of the term "victim" as used in Section 1191.1 includes ~~any~~ the following:

(a) Any insurer or employer who was the victim of workers' compensation fraud for the crimes specified in Section 549 of this code, Sections 2314 and 6152 of the Business and Professions Code, Sections 1871.4, 11760, and 11880 of the Insurance Code, and Section 3215 of the Labor Code.

(b) Any individual who was exposed to a chemical discharged or released in violation of subdivision (a) of Section 374.9 or exposed without proper warning in violation of subdivision (b) of Section 374.9.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school

1 district will be incurred because this act creates a new crime or
2 infraction, eliminates a crime or infraction, or changes the penalty
3 for a crime or infraction, within the meaning of Section 17556 of
4 the Government Code, or changes the definition of a crime within
5 the meaning of Section 6 of Article XIII B of the California
6 Constitution.

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